ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In The Matter of:	)	Docket No. 02-0426
Illinois Commerce Commission	)	
On Its Own Motion	)	
Revision of 83 Ill.Adm.Code 732	)	

INITIAL BRIEF OF LOCAL UNION NO. 51, LOCAL UNION NO. 702, AND LOCAL UNION NO. 21 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW)

NOW COMES IBEW, by and through its attorney Neil F. Flynn and in accordance with the Administrative Law Judge's Order of July 18, 2002, hereby submits its Initial Brief.

Introduction

On July 18, 2002, Administrative Law Judge Albers entered an Order directing the parties to this Docket to file initial briefs on two issues: (1) whether the Commerce Commission's "90 day strike or other work stoppage" waiver/exemption rule (adopted in Docket 01-0485) is preempted by federal law; and (2) whether the Commerce Commission lacked statutory authority to promulgate this "90 day strike or other work stoppage" waiver/exemption rule.

For the reasons set forth in this Brief, IBEW maintains that (1) the Commission's "90 day strike or other work stoppage" waiver/exemption rule is preempted by federal law, and is therefore, null and void; and (2) the Commission was without statutory authority to promulgate any such "90 day strike or other work stoppage" exemption or waiver from the service quality standards set forth in Section 13-712 of the Illinois Public Utilities Act (220 ILCS 5/13-712, enacted by Public Act 92-22, effective June 30, 2001).

I. Federal Preemption

The federal preemption doctrine is anchored in the Supremacy Clause of the United States Constitution. In relevant part, the Supremacy Clause declares that "...the Laws of the United States which shall be made in Pursuance [of the Constitution]... shall be the supreme Law of the Land..." U.S. Const. art. VI, cl. 2. This provision invalidates all state laws that conflict or interfere with acts of Congress. National Labor Relations Board v. State of Illinois Department of Employment Security, 988 F.2d 735 (7th Cir. 1993). The National Labor Relations Act (NLRA) is an act of Congress made "in Pursuance of the Constitution." Amalgamated Ass'n. of St. Elec. Ry. & Motor Coach Employees of America v. Wisconsin Employment Relations Bd., 340 U.S. 383, 399, 71 S.Ct. 359, 368 (1951); State of Illinois Dept. of Employment Security, 988 F.2d at 738. As such, the NLRA is the "supreme Law of the Land", and any State statute that the NLRA preempts necessarily violates the Constitution.

The NLRA is a comprehensive code passed by Congress to regulate labor relations in activities that affect interstate and foreign commerce. Nash v. Florida Industrial Commission, 389 U.S. 235, 238, 88 S.Ct. 362, 365-66 (1967); State of Illinois Department of Employment Security, 988 F.2d at 738. The NLRA reflects congressional intent to create a uniform national body of labor law interpreted and administered by a centralized agency, the National Labor Relations Board. New York Telephone Co. v. New York State Department of Labor, 440 U.S. 519, 528; 99 S.Ct.1328,1334 (1979) State of Illinois Department of Employment Security, 988 F.2d at 738.

The Garmon Preemption Doctrine

The U.S. Supreme Court has developed two NLRA preemption doctrines. The first was set forth in San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773 (1959). Garmon holds that "[w]hen an activity is originally subject to §7 or §8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." Id at 245, 79 S.Ct. at 780. Section 7 of the NLRA sets forth the right of employees to organize and bargain collectively, while Section 8 sets forth prohibitions on conduct which constitute "unfair labor practices". (29 USC 157 and 158) "The Garmon rule is intended to preclude state interference with the National Labor Relation Board's interpretation and active enforcement of 'the integrated scheme of regulation' established by the NLRA." Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608, 613, 106 S.Ct. 1395, 1398 (1986). Thus, the NLRB has exclusive jurisdiction to determine and remedy unfair labor practices by employers and unions.

Exceptions to the Garmon Doctrine

However, there are two notable exceptions to the Garmon preemption doctrine. Under Garmon, there is no preemption if the regulated activity is (1) merely of peripheral concern to the federal labor laws or (2) touches interests deeply rooted in local feeling and responsibility. Talbot v. Robert Matthews Distributing Co., 961 F.2d 654, 660-61 (7th Cir. 1992; Garmon, 359 U.S. at 243-44, 79 S.Ct. at 779. Examples of cases and subjects which fall within the exceptions to the Garmon preemption rule include: Farmer v. United Brotherhood of Carpenters and Joiners, 430 U.S. 290, 97 S.Ct. 1056 (1977) (NLRA does not preempt state tort action by a union

member against his union in the case of intentional infliction of emotional distress); Belknap Inc. v. Hale, 463 U.S. 491, 103 S.Ct. 3172 (1983) (NLRA does not preempt state law action for misrepresentation and breach of contract by scab against employer); Sears Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180, 98 S.Ct. 1745 (1978) (NLRA does not preempt state law trespass action); Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132, 96 S.Ct. 2548 (1976) (NLRA does not preempt policing of actual or threatened violence to persons or destruction of property.

The Machinists Preemption Doctrine

The second preemption doctrine was established by the U.S. Supreme Court in Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132, 96 S.Ct. 2548 (1976). The Machinists' preemption doctrine prohibits state and local governmental regulation of areas that Congress left to the free play of economic forces. The Machinists' preemption doctrine preserves Congress' intentional balance between the power of management and labor to further their respective interests by use of their respective economic weapons. Cannon v. Edgar, 33 F.3d 880 (7th Cir. 1994). Congress left some forms of economic pressure unregulated and, at the same time, prohibited other forms of economic pressure. More specifically, states are prohibited "from imposing additional restrictions on economic weapons of self-help, such as strikes or lockouts ...unless such restrictions presumably were contemplated by Congress." Golden State, 475 U.S. at 615-16, 106 S.Ct. at 1399.

For the reasons set forth in this Brief, IBEW maintains the Commission's "90 day strike or other work stoppage" exemption is preempted by Garmon and by Machinists; and fails to satisfy either of the Garmon exceptions.

The Commission's "90 Day Strike or Other Work Stoppage" Exemption/Waiver Rule

In pertinent part, 83 Ill.Adm.Code Part 732 includes the following provisions in relation to service quality standards, customer credits and an "emergency situation":

"Section 732.30 Customer Credits

A telecommunications carrier shall credit customers for violations of the basic local exchange service quality standards described in Section 732.20 of this Part. ...

(e) Credits required by this Section do not apply if the violation of a service quality standard ...

3) occurs as a result of, or is extended by, an emergency situation; ..."

"Section 732.10 Definitions

...'Emergency situation' means a single event that causes an interruption of service or installations affecting end users of a local exchange carrier. The emergency situation shall begin with the first end user whose service is interrupted by the single event and shall end with the restoration or installation of the service of all affected end users. The term 'single event' shall include:

a declaration made by the applicable State or federal governmental agency that the area served by the local exchange carrier is either a State or federal disaster area; or

an act of third parties, including acts of terrorism, vandalism, riot, civil unrest, or war, or acts of parties that are not agents, employees or contractors of the local exchange carrier, or the first 90 ~~7~~ calendar days of a strike or other work stoppage; or

a severe storm, tornado, earthquake, flood or fire, including any severe storm, tornado, earthquake, flood or fire that prevents the local exchange carrier from restoring service due to impassable roads, downed power lines, or the closing off of affected areas by public safety officials.

The term 'emergency situation' shall not include:

a single event caused by high temperature conditions alone; or

a single event caused, or exacerbated in scope and duration, by acts or omissions of the local exchange carrier, its agents, employees or contractors or by the condition of facilities, equipment, or premises owned or operated by the local exchange carrier; or

any service interruption that occurs during a single event listed above, but are not caused by those single events; or

a single event that the local exchange carrier could have reasonably foreseen and taken precaution to prevent; provided, however, that in no event shall a local exchange carrier be required to undertake precautions that are technically infeasible or economically prohibitive."

A. The Commission's "90 Day Strike or other Work Stoppage" Exemption/Waiver Rule is Preempted by Federal Law, and is Therefore Null and Void.

First, the Commission's 90 day strike/work stoppage exemption constitutes a blanket waiver of an otherwise generally applicable regulatory requirement for Local Exchange Carriers (LECs), namely, the performance of the service quality standards mandated by 83 Ill.Adm.Code Part 732 and Section 13-712 of the Act (220 ILCS 5/13-712). It is not in dispute that the sole and specific intent of the Commission's 90 day strike/work stoppage exemption/waiver is to accommodate one party's (the employer's) response time resulting from the other party's (the union's) use of a lawful and NLRA sanctioned economic weapon (a strike). Further, this Commission exemption/waiver constitutes state action; constitutes state action which benefits one party; and creates such benefit to that party for, during, and after the negotiations of a collective bargaining agreement.

During and throughout this Commission's Docket 01-0485, and in reliance upon the Cannon case, the LECs and other parties argued that a five or seven day limit on the "strike or

other work stoppage" exemption/waiver was an unwarranted intrusion into the collective bargaining process; that such limitation "interferes with the collective bargaining process and would tend to compel or coerce agreement"; and that, as such, this interference and intrusion was preempted by the NLRA.

While a 90 day (as compared to a five or seven day) exemption/waiver may indeed shift the argument from "coercing management to settle the strike" to "creating a disincentive for management to settle the strike", a 90 day exemption does not cure the rule's unconstitutionality. Under the NLRA, the test for preemption is not whether a "shorter" strike/work stoppage exemption benefits the labor union or whether a "longer" strike/work stoppage exemption benefits the employer, but rather, once it is determined that a blanket strike/work stoppage exemption of any duration impacts protected activity within and pursuant to the collective bargaining process, then any state action impermissibly interferes with and is in conflict with the policy, purpose and intent of the NLRA. Not unlike the five or seven day exemption previously proposed by the Commission, the Commission's 90 day strike/work stoppage exemption/waiver unconstitutionally interferes with the collective bargaining process. Garmon; 359 U.S. at 245; Cannon, 33 F.3d at 885-86).

B. A Strike/Work Stoppage Exemption/Waiver From The Service Quality Standards Of An Unlimited Duration is Preempted By The NLRA.

During proceedings in this Commission's Docket 01-0485, several parties submitted briefs suggesting that the Commission adopt a "strike or other work stoppage"

exemption/waiver, and that such "strike or work stoppage" exemption/waiver be unlimited in its duration.

Any suggestion that federal or state law mandates the inclusion of a blanket and unlimited strike/work stoppage exemption/waiver from the performance of an otherwise applicable regulatory requirement is specious. IBEW maintains that those who advance that argument do not - and cannot - cite any legal authority for that position. Indeed, no such federal or state requirement exists.

In adopting 83 Ill.Adm.Code Part 732, the Commission concluded that the Supremacy Clause of the U.S. Constitution does not bar the Commission "from granting LECs a waiver from the obligations of Part 732 when LECs are confronted with a strike or work stoppage". The Commission's conclusion is based upon the following rationale:

> The NLRA was enacted to protect the collective bargaining process. Employers and employees must be free to bargain without pressure from governmental entities. The Commission finds that paying customer credits would unduly burden LECs that are faced with strikes. LECs that have lost their work force as the result of a strike should not and can not be expected to meet all of their obligations under Part 732. If required to pay customers credits during a strike or work stoppage, LECs may feel pressured to succumb to union demands and settle the strike to avoid paying credits. Because of the pressure to settle that LECs may feel, the Commission finds that Part 732 would interfere with the collective bargaining process and thus violate the Supremacy Clause. Accordingly, the burden which LECs must endure when faced with a strike or work stoppage, NLRA sanctioned economic weapons, should not be aggravated but instead should be ameliorated by granting such LECs a temporary waiver from the otherwise generally applicable obligations of Part 732. The duration of the waiver should be 90 calendar days, beginning on the day that a strike or work stoppage begins. The Commission finds that an exemption of this duration sufficiently balances the interests of LECs and customers.

(Commission's Interim Order on Rehearing, dated April 30, 2002, Docket 01-0485, p. 28-29) (Emphasis added) The Commission's conclusion is both puzzling and troubling. As noted, the Commission "finds" that "Part 732 would interfere with the collective bargaining process ...."

IBEW maintains that the "interference" with the collective bargaining process is not Part 732 - the performance of service quality standards. Rather, the "interference" in the collective bargaining process is the Commission's blanket waiver and excuse from the performance of the Part 732 service quality standards during the first 90 calendar days of a strike or other work stoppage.

Additionally, the Commission concludes that the burden of a strike or work stoppage - a sanctioned economic weapon under the NLRA - "should not be aggravated but instead should be ameliorated" by granting a temporary waiver from the obligations of Part 732. This statement is a clear admission of the Commission's purpose and intent to directly "tilt" or "adjust" an economic weapon specifically sanctioned by the NLRA. Moreover, and with respect to Part 732, this statement is perhaps the clearest evidence of the Commission's intent to interfere with the collective bargaining process.

A blanket "strike or other work stoppage" exemption/waiver of an unlimited duration is likewise an unwarranted intrusion into, and an improper interference with, the collective bargaining process, and as such is preempted by the NLRA. Garmon, Cannon.

C. The Commission's Strike/Work Stoppage Exemption/Exemption Improperly Thrusts the Commission (and the State of Illinois) Into An Area Exclusively Within The Jurisdiction of the National Labor Relations Board (NLRB) in Violation of the NLRA.

In Garner v. Teamsters Local 776, 346 U.S. 485, 74 S.Ct. 161 (1953), the U.S. Supreme Court described the preemptive effect of the National Labor Relation Board's exclusive jurisdiction under the NLRA:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies .... A multiplicity of tribunals and a diversity of procedures are quite as apt to product incompatible or conflicting adjudications as are different rules of substantive law."

Id. at 346 U.S. at 490-91. Section 7 of the NLRA sets forth the right of employees to organize and bargain collectively, while Section 8 sets forth prohibitions on conduct which constitute "unfair labor practices." (29 USC 157 and 158) In Garmon, the U.S. Supreme Court set forth an all-encompassing test based upon the NLRB's primary jurisdiction:

> "It is essential to the administration of the [National Labor Relations] Act that these determinations be left in the first instance to the National Labor Relations Board .... When an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with National policy is to be averted.

(Emphasis added) (Garmon, 359 U.S. at 244-45) The Garmon Court underscored the point that state regulation would be preempted even in an area where it might ultimately be concluded that the state regulation did not conflict with the federal scheme. The *potential* for conflict became the touchstone:

> "In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction .... The governing consideration is that to allow the State to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy."

Garmon, 359 U.S. at 246. Garmon thus stands for the principle that potential, rather than actual, conflict is enough to require preemption. If conduct "is arguably within the compass of §7 or §8 of the Act, the State's jurisdiction is displaced." Garmon, 359 U.S. at 246. Preemption of arguably protected or prohibited conduct is necessary because the federal scheme envisions a single tribunal regulating within, and shaping, a uniform national labor policy. In addition, state court jurisdiction over questions involving unsettled issues under the Act might result in interference with protected activity.

If, in the event of a strike or work stoppage, the Commission is called upon to administer, implement and enforce the subject Commission rule, the Commission will inevitably and improperly thrust itself into an area exclusively within the jurisdiction of the NLRB. A few comments and questions will perhaps help illustrate this point:

Because the Commission's rule waives the LECs performance of service quality standards for the "first 90 calendar days of a strike or other work stoppage", it may be critically important, if not essential, for the Commission to determine exactly when the strike or work stoppage officially began as well as when such strike or work stoppage ended. For purposes of Part 732, does the strike/work stoppage begin when the first worker walks off the job? When a majority of the workers walk off the job? When the union's executive committee votes to authorize a strike? When the union membership votes to ratify the commencement of a strike? To interpret and enforce Part 732, the Commission would surely be required to investigate and adjudicate the "cause" or "causes" of the strike or work stoppage. What hearing or other administrative process would the Commission undertake in making these determinations?

It must be noted that neither Public Act 92-22 nor Part 732 define "strike" or "other work stoppage". Further, neither the Public Act nor Part 732 contain any provision requiring that the Commission make a determination with respect to the "cause" or "reasons" for the "strike" or "other work stoppage". Accordingly, for example, the subject Commission rule waives the LEC's performance of Part 732 service quality standards even if the carrier's "bad faith" or "unfair labor practice" "caused" the strike or other work stoppage. Again, for example, in the instance of a strike or other work stoppage that was "caused" or "occurred as a result of " the LEC/employer's "bad faith" or "unfair labor practices", the Commission's rule would still excuse or "waive" the LEC's performance of the Part 732 service quality standards during the first 90 calendar days of that "strike" or "other work stoppage". Even in the instance of an employer "lockout" - whether in accordance with the NLRA or not - it cannot be rationally argued that the lockout is beyond the control of the LEC/employer. As a result, both the letter and policy of the Commission rule would work to "reward" the bad acts of that LEC/employer.

Incredibly, the Commission's strike/work stoppage exemption/waiver fails to even specify that the underlying strike or work stoppage must involve the LEC or that LEC's workforce! Under this Commission rule, an LEC's performance of the Part 732 service quality standard is waived as long as the Commission determines that the LEC's failure to perform was "caused by" or "occurred as a result of" any strike or work stoppage including a strike or work stoppage perhaps involving an LEC's vendor, contractor or any other third party!

Again, in the instance of a strike or other work stoppage, the implementation and enforcement of this rule will necessarily require the Commission to investigate and determine the "cause" of any strike or work stoppage; to investigate and determine whether the failure of the

LEC to meet the Part 732 service quality standards "occurred as the result of" a strike or work stoppage; and to investigate and determine whether the appropriate party or parties committed "unfair labor practices".

These determinations are within the exclusive jurisdiction of the NLRB. As such, the Commission's implementation, interpretation and enforcement of this strike/work stoppage exemption/waiver is preempted by the NLRA.

II The Commission Is Without Statutory Authority To Promulgate A "90 Day Strike or Other Work Stoppage" Exemption/Waiver From the Service Quality Standards Set Forth In Section 13-712 of the Illinois Public Utilities Act (220 ILCS 5/13-712, enacted by Public Act 92-22, effective June 30, 2001).

Administrative Agency Authority To Adopt Rules

Generally, any power exercised by an administrative agency, including rulemaking power, must find its source within the provisions of the statute by which the agency is created. Bio Medical Laboratories, Inc. v. Trainor, 68 Ill.2d 540, 551, 370 N.E.2d 223 (1977). An administrative agency has only such authority as is conferred by express provision of law or is found, by fair implication and intendment, to be incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objectives of the underlying statutory provisions. Karas v. Dixon, 67 Ill.App.3d 736, 739, 385 N.E.2d 133 (1978); Fahey v. Cook County Police Merit Board, 21 Ill.App.3d 579, 583, 315 N.E.2d 573 (1974).

An agency may not, however, adopt regulations which exceed or alter its statutory authority (Ruby Chevrolet, Inc. v. Dept. of Revenue, 6 Ill.2d 147, 126 N.E.2d 617 (1955); nor

may an agency adopt regulations which are contrary to the legislative purpose and intent of the statute (People ex rel. Illinois Highway Transportation Co. v. Biggs, 402 Ill. 401, 409, 84 N.E.2d 372 at 376 (1949)).

Finally, where an agency promulgates rules which are beyond the scope of its legislative grant of authority, such rules are invalid. (Bio-Medical Laboratories, Inc., supra; Ruby Chevrolet, Inc., supra). Similarly, to the extent that any agency rule is in conflict with the statutory language pursuant to which the rule was adopted, that agency rule is void. Pye v. Marco, 13 Ill.App.3rd 923, 926, 301 N.E.2d 63 (1973).

In the instant Docket, the issue is not whether Section 13-712 of the Act (enacted by Public Act 92-22) granted the Commission authority to define "emergency situation" by rule. Rather, the issue is whether the Commission's adoption of the "strike or other work stoppage" exemption/waiver rule in Part 732 is a valid exercise of that legislative grant of authority.

A. Public Act 92-22 (House Bill 2900) Provides No Legislative Grant of Authority For the Commission To Adopt By Rule a "Strike or Other Work Stoppage" Exemption/Waiver From the Service Quality Standards Set Forth in Section 13-712 of the Act.

In Docket 01-0485, the Commission adopted modifications to Part 732.30 (Customer Credits). As authority for that rulemaking, the Commission cited Section 13-712 of the Public Utilities Act (220 ILCS 5/13-712). Section 13-712 of the Public Utilities Act was enacted by Public Act 92-22, effective on June 30, 2001.

Despite the Commission's citation and apparent reliance upon this new Section 13-712, there is no language in that Section, nor in any other section or provision of Public Act 92-22,

nor the Public Utilities Act that grants the Commission authority to adopt a "strike or other work stoppage" exemption/waiver from the service quality standards set forth in Section 13-712. Neither Section 13-712, nor any other provision of Public Act 92-22 nor the Public Utilities Act contains or even mentions the words "strike" or "work stoppage".

B. The Legislative History of Public Act 92-22 (House Bill 2900) Provides No Evidence That the General Assembly Intended That the Commission Adopt By Rule A "Strike or Other Work Stoppage" Exemption/Waiver From the Service Quality Standards Set Forth in Section 13-712 of the Act.

The final passage debate on House Bill 2900 took place in the Illinois Senate on May 30, 2001, and took place in the Illinois House of Representatives on May 31, 2001. House Bill 2900 passed the Senate on May 30, 2001 by a vote of 45-2; and passed the House on May 31, 2001 by a vote of 112-1. (Attachment A is a copy of the Transcript of the Senate debate on House Bill 2900 on May 30, 2001. Attachment B is a copy of the Transcript of the House debate on House Bill 2900 on May 31, 2001.)

The House and Senate debates nowhere mention the issue of an exemption or waiver from the service quality standards in the event of a "strike or other work stoppage". Moreover, during the debate in the House, Representative Vincent Persico and Representative Andrea Moore made inquiries specifically with reference to Section 13-712, and specifically for the purpose of making a clear record as to the General Assembly's intent. (See House Transcript of May 31, 2001, pages 32-35). A review of the transcript confirms that the record does not contain a single reference to the "strike or other work stoppage" issue.

Further, the chief House sponsor of House Bill 2900 repeatedly mentioned in debate that this legislation was "the culmination of 18 months of work by the bipartisan, bicameral telecommunications rewrite process". (See Representative Hamos's remarks, House Transcript, page 145)

At the same time, the chief Senate sponsor of House Bill 2900 stated that "House Bill 2900 represents over eighteen 18 months of work that all four caucuses have been actively involved for hours and hours in hundreds and hundreds of meetings." (See Senator David Sullivan's remarks, Senate Transcript, page 33)

The process which developed HB 2900 also included the participation and significant efforts on the part of many interest groups, trade associations, legislative staff, legislators, municipalities, consumer groups, and governmental agencies - including the Illinois Commerce Commission.

Despite the gargantuan efforts and the active participation of an abundance of interest groups in developing House Bill 2900, the legislative history reflects that the "strike or other work stoppage" exemption/waiver was never proposed or even under consideration.

It is also noteworthy that other legislation introduced during the very same session of the General Assembly (the 2001 Session of the 92nd Illinois General Assembly) did indeed contain an "exemption" from the service quality standards for "strikes". That legislation (Senate Bill 582) however, failed to obtain approval by the Telecommunications Subcommittee of the Senate Environment and Energy Committee, and did not pass the General Assembly. (Attachment C is a copy of Senate Bill 582 and the Legislative Synopsis and Digest containing the legislative history of the legislation).

Finally, had the General Assembly intended to create an exemption or waiver from the service quality standards for a "strike or other work stoppage" (other than the exceptions set forth in Section 13-712(e) of the Act), the General Assembly could have and would have done so. In fact, and by way of example, in this very same piece of legislation (House Bill 2900), the General Assembly specifically created a process whereby an "incumbent local exchange carrier" (ILEC) may petition the Commission and whereby the Commission may grant a waiver from the "advanced telecommunications services" provisions of the legislation. (See Specifically 220 ILCS 5/13-517.)

With respect to the service quality standards set forth in Section 13-712, however, the General Assembly did not provide nor did the General Assembly intend to provide any such exemption/waiver in the case of a "strike or other work stoppage".

C. If the "Single Event" (Within the Definition of "Emergency Situation") is a "Strike or Other Work Stoppage", the Application of the Commission Rule Results in an Absurdity Which the Legislature Most Definitely Did Not Intend.

Under the Commission rule, "the first 90 calendar days of a strike or other work stoppage" is not defined as an "emergency situation", but rather is defined as a "single event". (See 83 Ill.Adm.Code Section 732.10 Definitions)

The rule's definition of "emergency situation" also provides that the duration of an "emergency situation" "shall begin with the first end user whose service is interrupted by the

single event and shall end with the restoration or installation of the service of all affected users". (83 Ill.Adm.Code Section 732.10)

If the "single event" in question is "the first 90 calendar days of a strike or other work stoppage", then under this Commission rule, the duration of the "emergency situation" (and consequently, the period of time during which an LEC's non performance of the service quality standards is waived) may indeed be for a period of time well in excess of the first 90 days of a strike or other work stoppage.

For example, assume that on Day 1, 100 LEC customers (end users) appropriately request installation or repair service covered by Part 732. On Day 2, a strike begins and continues uninterrupted for the next 100 days. On Day 91of the strike, the "single event" (the first 90 days of the strike) has expired. However, the "emergency situation" would not end (and consequently, the period of time during which the affected LEC's non performance of the service quality standards is waived) until the restoration or installation of service to all 100 end users has been accomplished. Further, the rule places no obligation upon the LEC and establishes no time frame within which such services must be installed or restored after the expiration of the first 90 calendar days of a strike or other work stoppage.

When the "single event" in question is an Act of God, natural disaster, or weather related emergency, the definition and duration of the "emergency situation" represents sound and fair policy. When the "single event" in question is the first 90 days of a strike or other work stoppage, however, the application of the Commission rule results in an absurd and ridiculous policy which the General Assembly neither authorized nor intended.

For the reasons above set forth, IBEW respectfully submits that the Commission is without statutory authority to promulgate a "strike or other work stoppage" exemption or waiver from the service quality standards set forth in Section 13-712 of the Public Utilities Act, and as currently exists in 83 Ill.Adm.Code Section 732.30.

Respectfully submitted,

Local Unions No. 51, No. 702 and No. 21 of the International Brotherhood of Electrical Workers

By: _____
Their Attorney

Date: August 15, 2002

Neil F. Flynn
Attorney At Law
1035 South Second Street
P.O. Box 37
Springfield, Illinois 62705-0037
Telephone: 217-544-0261
nflynn@allcirco.com

CERTIFICATE OF SERVICE

The undersigned certifies that on August 16, 2002, a copy of the foregoing instrument was served upon the following parties by depositing said instrument in the U.S. Mail, with postage thereon fully prepaid, at Springfield, Illinois, plainly addressed as follows:

Karen Coppa
City of Chicago
30 N. LaSalle St., Ste. 900
Chicago IL 60602-2580

Matt C Deering
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign IL 61826-6750

Douglas A Dougherty
Illinois Telecommunications Association, Inc.
300 E. Monroe St., Ste. 306
PO Box 730
Springfield IL 62705

Michael Guerra
Atty. for Verizon North/Verizon South
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago IL 60606

Rick Holzmacher
Executive Vice President
Illinois Independent Telephone Association
212 Thames River Rd.
Springfield IL 62707

James Huttenhower
Illinois Bell Telephone Company
Suite 25-D
225 W. Randolph Street
Chicago IL 60606

Mark A Kerber
Counsel
Illinois Bell Telephone Company
225 W. Randolph St., 25D
Chicago IL 60606

Michael J Lannon
Illinois Commerce Commission
Suite C-800
160 N. LaSalle
Chicago IL 60601

Dennis K Muncy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign IL 61826-6750

Joseph D Murphy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St., PO Box 6750
Champaign IL 61826-6750

Conrad Reddick
City of Chicago
30 N. LaSalle St., Ste. 900
Chicago IL 60602

John E Rooney
Atty. for Verizon North Inc. and Verizon South, Inc.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago IL 60606

Susan L Satter
Illinois Attorney General's Office
11th Floor
100 W. Randolph
Chicago IL 60601

A. Randall Vogelzang
Verizon North/Verizon South
Verizon Services Group
600 Hidden Ridge
Irving TX 75038

Nancy Wells
620 S. 5th St.
Springfield IL 62703

Troy A. Fodor
TROY A. FODOR, P.C.
913 South Sixth Street
Springfield, Illinois 62703

John Albers
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Neil F. Flynn, Attorney for
Local Unions No. 51, No. 702 and No. 21
of the International Brotherhood of
Electrical Workers

Neil F. Flynn
Attorney At Law
1035 South Second Street
P.O. Box 37
Springfield, Illinois 62705-0037
Telephone: 217-544-0261
nflynn@allcirco.com